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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/577,751	12/08/2000	Cheryl Ann Letson	12513	3917

7590 03/25/2004

EXAMINER
PATEL, TAJASH D

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ART UNIT	PAPER NUMBER
3765	14

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/577,751	Applicant(s) LETSON ET AL.	
	Examiner Tejash D Patel	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 December 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 3, 7, and 8 are objected to because of the following informalities: In claim 3, line 2, the misspelled term "traps" should be changed to -- straps --. In claim 7, on line 1, the dependency of this claim should be changed to -- claim 2-- , since claim 1 has already been cancelled. Appropriate correction is required.

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claim 3 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 8. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 2, 12, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Carman et al. (US 5,081,718). Carman et al. (hereinafter Carman) discloses a protective apron that has a bib (3) which protects the chest, leg panels (1,2) being connected to the bib, and foot covers (5) being connected to the leg panels as shown in figure 1. Further, the foot covers extends over the toe and feet portions when the apron is worn. Additionally, the bib of the apron includes a pocket (17) thereon as shown in figure 1.

6. Claims 2, 3, 8, and 16 rejected under 35 U.S.C. 102(b) as being anticipated by Foster (US 5,901,374).). Foster discloses a protective apron (10) that has a bib portion (12) which protects the chest, leg panels (22) being integrally connected to the bib portion, and foot covers (24) being connected to the leg panels as shown in figure 1. Further, the foot covers extends over the toe and feet portions when the apron is worn. Additionally, adjustable straps (16,20) are connected to the bib portion and leg panels as shown in figure 1.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 9-11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Foster.

With regard to claims 9-11, it would have been obvious to one skilled in the art that the apron of Foster can be made of any desired material, which are available at the time the device is Constructed.

With regard to claim 15, it would have been obvious to provide the apron of Foster with a design on the bib as a matter of design choice.

10. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carman. Carman discloses the invention as set forth above except for showing a tool loop and a pencil holder being attached the bib.

Lyons discloses an apron defining a bib (1) having a tool loop (5) and a pencil holder (9), page 1, (col. 1, line 47 – col. 2, line 51) as shown in figures 1-3.

It would have been obvious to one skilled in the art at the time the invention was made to provide the bib of Carman with a tool loop and a pencil holder as taught by Lyons. Doing so, would allow the desired items to be carried within the respective pockets as required for a particular application thereof.

Response to Amendment

11. The arguments and amendment of newly added claim 16, received on December 29, 2003 has been considered. In view of such, the arguments are moot in view of newly applied prior art references. This action is being made new-non Final.

Allowable Subject Matter

12. Claims 4-6 would be allowable if rewritten to overcome the objection under 37 CFR 1.75 set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (703) 306-9184. The fax phone number for this group is (703) 305-3580.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0861.

March 17, 2004

TEJASH PATEL
PRIMARY EXAMINER